

REMARKS

Applicants have received and carefully reviewed the Final Office Action mailed March 24, 2004. Claims 191-217 remain pending. Claims 191, 193-197, 200, 201, 203-214 and 216 have been amended. Reconsideration and reexamination are respectfully requested.

The Specification has been amended to correct minor informalities. Further, certain claims are amended to clarify the elements. For example, the term "sinus rhythm" is replaced with the correct term "cardiac rhythm". Also, the phrase "supply power" is corrected to "supplying energy". Further, the term "subcutaneously" has been deleted from certain dependent claims as the place of implantation is already recited in the independent claim. No new matter has been added.

In paragraph 2 of the Final Office Action, claims 191-192 were rejected under 35 U.S.C. §102(b) as being anticipated by Causey, III, U.S. Patent No. 5,411,547. Due to the above amendments, it is believed that this rejection is rendered moot, as further detailed below. Claims 191-192 are now believed to be in condition for allowance.

In paragraph 3 of the Final Office Action, claims 191-194, 196-200, 207, 210 and 215 were rejected under 35 U.S.C. §102(b) as being anticipated by Dahl et al., U.S. Patent No. 5,230,337. Due to the above amendments, it is believed that this rejection is rendered moot, as further detailed below. Claims 191-194, 196-200, 207, 210 and 215 are now believed to be in condition for allowance.

In paragraph 5 of the Final Office Action, claim 200 was rejected under 35 U.S.C. §103(a) as being anticipated by Causey, III, in view of Bardy, U.S. Patent No. 5,292,338. Due to the above amendments, it is believed that this rejection is rendered moot. Claim 200 is now believed to be in condition for allowance.

In paragraph 7 of the Final Office Action, a double patenting rejection was stated with respect to claims 205 and 206. In particular, claim 206 was rejected. Both claims have been amended to become independent claims incorporating former claim 191, the base claim from which each depended. Applicants believe that the claims are indeed distinguishable and do not have the same scope. In particular, the last phrase of claim 205 reads "wherein the amount of energy discharged is selected to achieve a pacing function." Meanwhile, the last line of claim 206 reads "wherein the amount of energy is selected to achieve a defibrillation function."

For example, a 200-Joule shock may qualify as an amount of energy selected for a defibrillation function, but would not be an amount selected for a pacing function. Therefore, claim 206 may be infringed without literal infringement of claim 205. This is no slight difference in wording. It is believed that these energy levels render claims 205 and 206 sufficiently different to prevent a reading justifying a 35 U.S.C. §101 double patenting rejection. In light of these remarks, it is believed that the rejection for double patenting should be withdrawn.

In paragraph 8 of the Final Office Action, claims 195, 201-205, 208 and 211-214 were objected to as being dependent upon rejected base claims. The Examiner noted that each would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is believed that, but for the above noted double patenting rejection, claim 206 would have been included in this group as well, and so claim 206 is treated along with these other claims.

Claim 191 has been amended to incorporate the recitations of former claim 195. In light of the Examiner's comments, claim 191, along with dependent claims 192-194 and 196-200, is believed to be in condition for allowance.

Claim 195 itself has been amended to depend from claim 206 which, as noted above and below, is believed to be in condition for allowance such that the objection to claim 195 is overcome.

Claims 201 and 203-206 have been amended to become independent claims incorporating the limitations of previous claim 191. Therefore, the objections to these claims are believed to be overcome.

Claim 202 has not been amended, but depends from claim 201, which is now believed to be in condition for allowance. Therefore, this objection is believed overcome.

Claim 207 has been amended to incorporate the limitations of former claim 212. In light of the Examiner's comments, claim 207 is believed to be in condition for allowance. As such, the rejections of claims 210 and 215, along with the objections to claims 211, 213 and 214, are believed to be overcome or rendered moot.

Claim 208 has been amended to incorporate former claim 207 such that the objection to claim 208 is believed overcome, and claim 208 is in condition for allowance.

While the Office Action Summary notes claim 209 as being rejected, it is discussed under the Allowable Subject matter heading and is not noted in the list of rejections. It is believed that the Examiner's statements on Page 8 of the Office Action indicate that claim 209 should have been listed as a claim which was objected to, but which would be allowable if amended to incorporate its base claim and any intervening claims. Therefore, claim 209 has been amended to be an independent claim incorporating former claim 207 and is believed to be in condition for allowance at least for the reasons stated on page 8 of the Office Action.

Claim 212 has been amended to depend from claim 208, which is itself believed to be allowable. Therefore claim 212 is believed to be in condition for allowance.

In paragraph 9 of the Final Office Action, the Examiner stated that claims 216-217 were allowed.

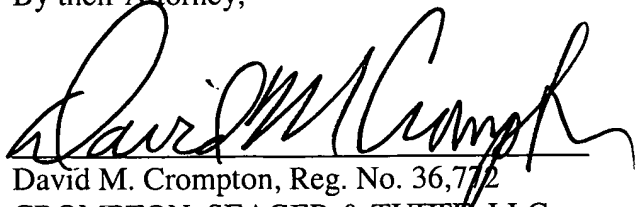
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney,

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